

REMARKS

In the Office Action of April 30, 2004, the Examiner indicated that Claims 7-8 would be allowable if rewritten to overcome the rejections under Section 103 and to include all of the limitations of the base claim and any intervening claims. Applicants have submitted herewith new Claims 19 and 20 which represent Applicants' attempt to comply with the Examiner's indication. Applicants have also amended Claims 1, 11 and 12 to more clearly distinguish the present invention from the cited art. Claim 11 has been amended to reflect the fact that a subpelvic strap is not mentioned in Claim 1. Claims 1-20 are before the Examiner for reconsideration.

The Examiner rejected Claims 1 and 9-12 under 35 U.S.C. § 102(b) "as being anticipated by O'Rourke (US 5,433,289)." The Examiner specifically asserted that:

O'Rourke discloses a body harness (2) including a pair of shoulder straps (4), a pair of leg/subpelvic straps (6, 28) and a spreading back pad (22) in which each of the shoulder strap[s] passes therethrough and is connected [sic] the leg straps as shown in figure 2. In addition, each of the shoulder straps and leg/subpelvic straps are curved about the body when harness is worn. Furthermore, the end of the leg straps is connected to a leg buckle as shown in figure 1.

Applicants respectfully traverse the Examiner's rejection since the O'Rourke reference does not disclose Applicants' claimed invention.

To assert anticipation under Section 102 (b), the cases hold that the Examiner:

... must show that each element of the claim in issue is found, either expressly described or under principles of inherence, in a single prior art reference, or, that the claimed invention was previously known or embodied in a single prior art device or practice.

Kalman v. Kimberly-Clark Corp., 713 F.2d 760, 771, 218 USPQ 781, 789 (Fed. Cir. 1983), cert. denied, 465 U.S. 1026 (1984) ; Tvler Refrigeration v. Kysor Industrial Corp., 777 F.2d 687, 689, 227 USPQ 845, 846-47 (Fed. Cir. 1984) (judgment of anticipation reversed). "In deciding the issue of anticipation, the trier of fact must identify the elements of the claims, determine their meaning in light of the specification and prosecution history, and identify corresponding elements disclosed in the allegedly anticipating reference." Lindemann, 730 F.2d at 1458, 221 USPQ at 485; Kalman, 713 F.2d at 771, 218 USPQ at 789.

"The test for determining if a reference anticipates a claim of a patent is whether the reference contains within its four corners adequate directions for the practice of the patent claim" Kistler Instrument A.G. v. United States, 628 F.2d 1303, 1311, 203 USPQ 511, 519, affd., 211 USPQ 920 (Ct. Cl. 1980). The reference, whether foreign or domestic, patent or otherwise, must be construed strictly for what it "clearly and definitely discloses." Application of Boling, 292 F.2d 306, 310-11, 130 USPQ 161, 164 (CCPA 1961); Aluminum Co. of Am. v. Sperry Products, Inc., 285 F.2d 911, 922, 127 USPQ 394, 403 (6th Cir. 1960), cert. denied, 368 U.S. 890 (1961). A patent is not anticipated by a reference "unless the latter exhibits the invention in such full, clear and exact terms as to enable any person skilled in the art to practice it without making experiments." 285 F.2d at 922, 127 USPQ at 403.

Contrary to the Examiner's contention, O'Rourke does not disclose the use of "curved webbing" as that term is understood in the present application. Applicants have amended Claims 1 and 12 to clarify that the "curved webbing" of the present invention has been preformed into a curved shape before being worn. This clearly distinguishes the present invention from the Examiner's attempt to argue that O'Rourke discloses the use of curved webbing simply because the "straps are curved about the body when the harness is worn." For this reason alone, Applicants' invention as claimed is not anticipated by O'Rourke.

The Examiner rejected Claim 3 and 13-14 under 35 U.S.C. § 103 "as being unpatentable over O'Rourke." The Examiner specifically asserted that:

With regard to claim 3, it would have been obvious to one skilled in the art that the back pad of O'Rourke can be generally Y-shaped as required for a particular applicant or end use thereof.

With regard to claim 13, it would have been obvious that the curved straps of O'Rourke can be made of any desired material that was available at the time device as constructed.

With regard to claim 14, it would have been obvious that the curved straps of O'Rourke can be formed of any required width depending on the particular application thereof.

Also, the Examiner rejected Claims 2 and 4-6 under 35 U.S.C. § 103 "as being unpatentable over O'Rourke in view of Neustater et al. (US 5,960,480)". Specifically, the Examiner asserted that:

O'Rourke discloses the invention as set forth above except for showing the back pad being X-shaped with openings in upper and lower arms. Neustater et al. (hereinafter Neustater) discloses a body harness including a pair of shoulder straps (38, 40), a pair of leg straps and a spreading back X-shaped pad (28) having openings in upper and lower arms such that each of the shoulder strap[s] passes therethrough and is connected [sic] the leg straps as shown in figure 3.

Applicants respectfully traverse the Examiner's obviousness rejections.

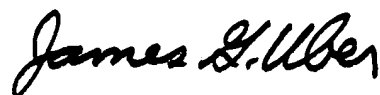
To the extent the Examiner's obviousness rejections rely on the O'Rourke reference, Applicants respectfully submit that the amendments to Claims 1 and 12 render these rejections moot for the reasons set forth above. Moreover, contrary to the Examiner's contention, O'Rourke only discloses a back pad in the shape of a pentagon. O'Rourke does not show or describe a Y-shaped back pad let alone an X-shaped back pad. Even Neustater et al.,

which discloses an octagon back pad with slots therein such that the straps cross in an X-shape does not disclose or teach that the openings in the upper arms of the X are slightly offset upwardly and outwardly from the centerlines of the back pad relative to the openings in the lower arms of the X. For any of these reasons, the present invention is not obvious in view of O'Rourke, either alone or in combination with Neustater et al.

Applicants are also filing herewith for the Examiner's consideration a copy of the Search Report which Applicants received last month from the European Patent Office in the corresponding PCT Application No. PCT/US03/29928. None of the references cited therein render the present invention unpatentable.

In view of the above amendments and remarks, Applicants respectfully request that the Examiner withdraw the rejections of the claims, indicate the allowability of Claims 1-20 and that an official Notice of Allowance be issued in due course.

Respectfully submitted,



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